



UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents  
United States Patent and Trademark Office  
P.O. Box 1450  
Alexandria, VA 22313-1450  
www.uspto.gov

ROBERT D BUYAN  
STOUT UXA BUYAN & MULLINS LLP  
4 VENTURE  
SUITE 300  
IRVINE CA 92618

COPY MAILED

FEB 06 2006

OFFICE OF PETITIONS

In re Application of	:	
Xiangfeng Dai	:	
Application No. 10/672,926	:	DECISION REFUSING STATUS
Filed: September 26, 2003	:	UNDER 37 CFR 1.47(b)
Attorney Docket No. CRICP-001A	:	

This is in response to the "Response to Notice to File Missing Parts and Petition Under 37 C.F.R. §§ 1.42 and 1.47", filed July 12, 2004, which is being treated as a petition under 37 C.F.R. §1.47(b).

The petition under 37 C.F.R. § 1.47(b) is **DISMISSED**.

Rule 47 applicant is given TWO MONTHS from the mailing date of this decision to reply, correcting the below-noted deficiencies. Any reply should be entitled "Request for Reconsideration of Petition Under 37 C.F.R. § 1.47(b)," and should only address the deficiencies noted below, except that the reply may include an oath or declaration executed by the non-signing inventor. **Failure to respond will result in abandonment of the application.** Any extensions of time will be governed by 37 C.F.R. § 1.136(a).

The above-identified application was filed on September 26, 2003, without an executed oath or declaration. Accordingly, on January 5, 2004, the Office mailed a "Notice to File Missing Parts of Nonprovisional Application - Filing Date Granted," requiring an executed oath or declaration and a surcharge for its late filing, together with the statutory basic filing fee. This Notice set a two-month period for reply.

In reply, applicant filed the instant petition on July 12, 2004, and paid both the petition fee, the surcharge for late filing of the declaration, and the statutory basic filing fee. To make timely this reply, applicant included a three month extension of time and a Certificate of Mailing dated July 6, 2004.<sup>1</sup>

A grantable petition under 37 C.F.R. § 1.47(b) requires: (1) proof that the non-signing inventor or legal representative cannot be reached or refuses to sign the oath or declaration after having been presented with the application papers (specification, claims and drawings); (2) an acceptable oath or declaration in compliance with 37 C.F.R. § 1.63; (3) the petition fee; (4) a statement of the last known address of the non-signing inventor or legal representative; (5) proof that the Rule 47(b) applicant has sufficient proprietary interest in the subject matter to justify the filing of the application; and (6) proof of irreparable damage. The instant petition does not satisfy requirements (1), (2), (4) or (6).

As to requirement (1), there has been no showing that the legal representative was presented with the application papers (specification, claims, drawings, oath or declaration) before refusing to sign the oath or declaration. See MPEP 409.03(d).

As to requirement (2), the oath or declaration must list the citizenship, residence, and mailing address of the legal representative. In addition, the oath or declaration must identify Dong Dai as a legal representative.

As to requirement (4), no statement of the last known address of the legal representative has been provided. See MPEP 409.03(c) and 409.03(e).

As to requirement (6), irreparable damage may be established by a statement that a filing date is necessary to preserve the rights of the party or to prevent irreparable damage. See MPEP 409.03(g).

Further correspondence with respect to this matter should be addressed as follows:

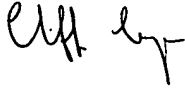
By mail:                   Mail Stop Petitions  
                          Commissioner for Patents  
                          P.O. Box 1450  
                          Alexandria VA 22313-1450

By FAX:                   (571)273-8300  
                          Attn: Office of Petitions

---

<sup>1</sup> However, as a four month extension of time was necessary, Deposit Account No. 50-0878 has been charged the amount of \$265, representing the difference between the \$740 fee for a four month extension of time and the \$475 fee for a three month extension of time (fees in effect on the petition filing date).

Telephone inquiries related to this decision may be directed to the undersigned at (571)272-3207.

A handwritten signature in cursive script, appearing to read "Cliff Congo".

Cliff Congo  
Petitions Attorney  
Office of Petitions